

**CITY OF CENTENNIAL
OPEN SPACE FUND GRANT
FUNDING PARTICIPATION INTERGOVERNMENTAL AGREEMENT
2021 FUNDING**

Funding Recipient: _____ (also referred to as “_____”)

**Funding Recipient
Business Address:**

Project(s) Name:
 (“*Project*”)

Project Description: As set forth on **Exhibit A**

Project Purpose: As set forth on **Exhibit A**

THIS GRANT FUNDING PARTICIPATION AGREEMENT (“*Agreement*”) is entered into by and between the Funding Recipient named above (“***Funding Recipient***”) and the **CITY OF CENTENNIAL, COLORADO (“*City*”)**, a Colorado home rule municipality, and is effective as of the last date of execution by the parties as set forth in the signature block below (“***Effective Date***”). The City and the Funding Recipient may each be referred to as a “***Party***” and collectively referred to as the “***Parties***.”

RECITALS AND REPRESENTATIONS

WHEREAS, the City is authorized to enter into contracts pursuant to C.R.S. §31-15-101, and is authorized to fund and construct parks, open space and trails; and

WHEREAS, Funding Recipient is a quasi-municipal corporation and political subdivision of the State of Colorado, formed pursuant to state statutes, and is authorized to construct, own and operate park, open space, trails and recreational facilities; and

WHEREAS, in 2003, voters in Arapahoe County, Colorado, (“***County***”) approved a countywide .25 percent sales and use tax with 50 percent of the sales taxes received to be shared with incorporated municipalities within the County (“***Countywide Open Space Tax***”) subject to an intergovernmental agreement with the County; and

WHEREAS, the Countywide Open Space Tax was extended through December 31, 2023, by the County voters at the general election held November 6, 2012, pursuant to County Resolution 110637; and

WHEREAS, by Resolution 2004-R-38, the City approved and entered into an Intergovernmental Agreement with the County for receipt of its pro rata share of the Countywide Open Space Tax (“***IGA***”) and, by Resolution 2013-R-02, the City approved and entered into a First Amendment to the IGA, agreeing to use such funds in accordance with County Resolutions 030381 and 110637, which uses are generally limited to (a)

preserving urban and rural open space and natural areas, (b) protecting lands that preserve water quality in rivers, lakes and streams, (c) purchasing, developing, improving, providing, and maintaining new and existing neighborhood and regional parks, open space, sports fields, picnic facilities and multi-use trails, (d) protecting wildlife habitat and corridors, (e) protecting views, vistas and ridgelines, (f) preserving agriculture and ranch lands, and (g) enhancing and maintaining designated heritage areas; and

WHEREAS, the City established an Open Space Fund for the acquisition of open space and park, trail, and recreation facility improvements to the greatest extent permitted by the purposes of the Countywide Open Space Funds and other funding sources, which Open Space Fund is funded by the City's allocation from the Countywide Open Space Funds; and

WHEREAS, by Resolution No. 2017-R-44, the City ratified the adoption of the Centennial Trails and Recreation Plan ("**TRP**") (adopted by the Planning and Zoning Commission by 2017-PZ-R-22) which identifies the need for upgrades and continued maintenance to existing parks and recreational facilities, acquisition of open space, and completion of trail connections to enhance neighborhood access to the regional trail network within, surrounding and along the City; and

WHEREAS, the City recognizes that the Project meets the evaluation criteria set forth in the City's TRP; and

WHEREAS, the Project is consistent with the TRP and supports the City's Open Space Fund goals as the Project involves the acquisition of open space and/or park, trail, and recreation facility improvements as more fully described in Exhibit A; and

WHEREAS, the Funding Recipient is committed to completion of the Project and the City finds that completion of the Project will greatly benefit the health and welfare of Centennial residents; and

WHEREAS, the City desires to participate in completion of the Project with the Funding Recipient by assisting in the funding of the Project as set forth herein; and

WHEREAS, the City and the Funding Recipient agree, as more fully set forth herein, that, in the event that the City were ever to take ownership of the assets improved with funds provided by the City hereunder, the cost(s) of acquiring such asset(s) would be reduced by the amount of funding provided by the City hereunder.

NOW, THEREFORE, in consideration of the benefits and obligations of this Agreement, the Parties mutually agree as follows:

1. City Funding Commitment.

- A. Aggregate Funding Maximum. The City shall provide the following maximum aggregate dollar amount from its Open Space Fund for all components of the Project:

\$ _____ (“**Funding Amount**”)

- B. Funding Recipient Funding Commitment. Payment of the Funding Amount by the City is contingent upon the Funding Recipient also providing funding for the Project as set out in **Exhibit A.**
- C. Third Party Funding. Payment of the Funding Amount by the City is not contingent upon the Funding Recipient receiving additional third-party funding for the Project.
- D. Source of Funding. The City’s Open Space Funds allocated to the Project will consist of funds from the Countywide Open Space Funds.
- E. Phasing of Funding. Funding Amount will be paid to Funding Recipient in either a single installment or in multiple installments as set forth on **Exhibit B.**
- F. Payment of Funding Amount. Whenever any Funding Amount is to be paid as and if indicated in Section 1(A) and Exhibit B, such amount shall be paid to Funding Recipient within thirty (30) days of receipt by the City of an invoice therefore in the form attached hereto as **Exhibit C** and such accompanying documentation as may be required by the City Manager’s designee who shall be the Funding Recipient’s primary contact at the City for purposes of administration of this Agreement (“City Representative”) to show that payment is due in accordance with the Phasing of Funding provisions set forth herein. The Funding Recipient shall submit such invoices and accompanying documentation not more than once monthly. The City shall have the right to request and Funding Recipient shall provide, upon such request, additional information to substantiate any invoice for any payment or installment of the Funding Amount under this Agreement.
- G. Obligation to Refund Funding Amount If Project or Any Component Thereof Not Completed As Described or Completed under Budgeted Amounts. If the Project or any component thereof is not completed as described and within the approximate timeframe described, the Funding Recipient shall be obligated to reimburse the City any of the Funding Amount advanced within thirty (30) days of receipt by the Funding Recipient of a demand therefor by the City. If the Project or any component thereof is completed under amounts budgeted for such Project or component, which budget formed the basis for the Funding Amount provided hereunder for such Project or component thereof, the Funding Recipient shall be obligated to reimburse the City a portion of the Funding Amount advanced on a pro rata basis calculated on percentage of budget saving within thirty (30) days of receipt by the Funding Recipient of a demand therefor by the City. It is the intent

of the Parties that any unspent amounts from the Funding Amount shall be returned to the City.

2. Funding Recipient Obligations.

- A. Completion of the Project. The Funding Recipient shall complete or cause to be completed the Project or each component, phase, task or milestone of the Project within the term of this Agreement as set out in Paragraph 3A. The Funding Recipient shall diligently manage and oversee the completion of each component or phase if and as outlined in **Exhibit B** so as to meet the completion deadlines.
- B. Compliance with Use of Funds Limitations. The Funding Amount shall be used solely for the Project. The Funding Recipient acknowledges that Countywide Open Space Funds, have restrictions on the use of such funds, and that the Funding Recipient has been provided a copy of such use restrictions, and Funding Recipient represents and warrants that the Project qualifies as an acceptable use of such funds. If additional sources of revenue or funds are part of the Funding Amount as indicated in Section 1(B) of this Agreement, the Funding Recipient represents and warrants that the Project qualifies as an acceptable use of such funds to the extent that there are any use restrictions on such funds.
- C. Reimbursement of Funding Amount for Misuse of Funds and Indemnification for Costs Associated with Defending Against Such Challenges. Upon any binding determination that the Project or any component thereof does not comply with the use of funds restrictions applicable to the Countywide Open Space Funds, Funding Recipient shall be obligated to reimburse the City the full Funding Amount paid by the City to date for the Project within thirty (30) days of such binding determination. In the event that a challenge is raised that the Project or any component thereof does not comply with the use of funds restrictions applicable to the Countywide Open Space Funds, Funding Recipient shall be obligated to indemnify the City as more fully set forth in Section 2(K) of this Agreement.
- D. Management of the Project and Costs. The Funding Recipient acknowledges that the City's obligations toward completion of the Project and any components thereof are limited to providing the Funding Amount only in accordance with this Agreement and the Funding Recipient shall maintain responsibility for completing the Project within the timeframe(s) set forth in Section 2(A) and shall be responsible for the management of the Project, all Funding Recipient employees, contractors and sub-contractors associated with the Project, and for any expenses, costs or overruns associated with the Project, whether or not such expenses, costs or overruns were foreseeable.
- E. Naming Rights. The City shall have naming rights in and for the Project or any component thereof only as and if set forth on **Exhibit D**.

- F. City Recognition. In addition to the naming rights required under Section 2(E) of this Agreement, if any, Funding Recipient agrees to provide at no additional cost to the City, recognition as described below:

A permanent plaque, sign or notice in a form and publicly visible location associated with the Project or any component thereof to be approved by the City Representative in his or her discretion that recognizes that the Project was supported with funding provided by the City. The City Representative shall confer with the Funding Recipient about the form, location and format of such marker of funding recognition. The required signage shall comply with the City's obligations related to use of Countywide Open Space Funds, if applicable.

- G. Ongoing Reporting. Funding Recipient shall provide the City Representative with periodic reports on a reporting schedule as checked below, which reports shall be satisfactory in detail, format and delivery method to the City Representative, and shall, at a minimum, set forth the progress of the Project or each component thereof, or if the Funding Amount is to be paid in installments pursuant to Section 1(D) and **Exhibit B** of this Agreement, progress of each relevant component, phase, task or milestone of the Project, how the City Funding Amount has been used to date of the report, any changes requested to the schedule set forth in Exhibit B of this Agreement (which schedule changes must be agreed to in writing by the City), and any regulatory or public relations issues that may arise.

Reporting shall be provided at the completion of each phase, task or milestone as outlined on Exhibit B.

- H. Final Report. Funding Recipient shall provide the City Representative with a final report upon completion of the Project or any component thereof, which report shall be satisfactory in detail, format, and delivery method to the City Representative, and shall, at a minimum, set forth how the City Funding Amount was used to complete the Project or any component thereof, any changes to the Project or any component thereof that were agreed to among the Parties during the pendency and completion of the Project or any component thereof, the public outreach plan to publicize the completion and availability of the finalized Project or any component thereof and any regulatory or public relations issues that arose. The final report required hereunder shall be due before any final payment of the Funding Amount if payment is a single installment or payment of the final installment of the Funding Amount if payment is in multiple installments.

- I. Continuing Operation and Maintenance. The City Funding Amount is provided with the understanding that the City has no responsibility for any operation and maintenance related to the Project or any component thereof and that the Funding Recipient is committed to maintaining or causing to be maintained the Project or any component thereof.

- J. Compliance with All Laws and Regulations. The Funding Recipient shall comply with all applicable federal, state and local laws that relate to the Project or any component thereof, including their uses and construction requirements, including but not limited to, City ordinances, building codes and regulations. Funding Recipient shall require all contractors and subcontractors involved in completion of the Project or any component thereof to execute an agreement with Funding Recipient whereby such contractor or subcontractor agrees to comply with all federal, state and local laws that relate to construction and completion of the Project or any component thereof including but not limited to, City ordinances, building codes and regulations, and labor and employment laws.
- K. Hold Harmless and Indemnification. Funding Recipient shall indemnify, defend and hold harmless the City, its officers, employees, agents, and servants from and against any and all liability, suits, actions, damages, costs, losses and expenses, including attorneys' fees, and against any orders, judgments, or decrees which may be entered thereon and from and against all costs, damages of every kind and nature, attorneys' fees, expenses and liabilities incurred in and about the defense of any such claim and investigation thereof, brought against the City, its officers, employees, agents, and servants, as a result of the City entering into this Agreement, or providing the Funding Amount under this Agreement. If Funding Recipient is a Colorado governmental entity subject to the protections of the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1, C.R.S., ("Act") the indemnification, defense and hold harmless obligations hereunder shall be limited to the extent permitted by law, including the limitations of the Act. Without limitation, except as set forth in the preceding sentence, if applicable, this indemnification obligation shall include reimbursement of the City of its full and reasonable costs, including reasonable attorneys' fees, associated with defending against any challenge that the Funding Amount was used in any manner that violates use of funds restrictions. Funding Recipient's indemnification of the City, however, shall not encompass any sums for which City is exempt based upon Colorado's governmental immunity statutes, as and if applied. The defense of and all liability, suits, actions, damages, costs, losses and expenses, including attorneys' fees, for which indemnification of the City is provided under this paragraph shall be the sole responsibility of the Funding Recipient unless the City provides written notice to the Funding Recipient of its decision to participate in such defense. Upon receipt of any claim against the City for which indemnification of the City is provided under this paragraph, the party receiving notice of such claim or potential claim shall notify the other party in writing within five (5) business days of receipt of such notice or demand.

3. Term and Termination.

- A. Term. This Agreement shall terminate twenty-four months from the Effective Date.

In either case, this Agreement is subject to extension mutually agreed upon in writing by the Parties. The City Manager is authorized to approve any amendment

of this Agreement on behalf of the City that does not amend the funding obligations of the City hereunder, such as an extension of the term.

- B. Termination. Should the Funding Recipient fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the City immediately upon providing written notice to the Funding Recipient specifying the non-performance and the City shall be entitled to reimbursement of all Funding Amount paid to date of termination, which shall be paid by the Funding Recipient to the City within thirty (30) days of the date of notice of termination.
- C. Effect of Termination; Survival. If the Funding Amount provided for hereunder has been paid and not reimbursed to the City pursuant to paragraph B of this Section, termination of this Agreement shall not relieve Funding Recipient of ongoing obligations such as City recognition, grants of naming rights and maintenance obligations, if any, and compliance with use of funds and hold harmless and indemnification obligations, such obligations being of a permanent nature that shall survive termination.

4. Miscellaneous Provisions.

- A. No Waiver of Rights. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party. No covenant or term of this Agreement shall be deemed to be waived by a Party except in writing signed by the governing body of the Party or by a person expressly authorized to sign such waiver by written authorization of a Party, and any written waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver unless specifically stated.
- B. Relationship of the Parties. The City and the Funding Recipient shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with each other than as contracting parties. Without limiting the foregoing, the Funding Recipient acknowledges that the City shall not provide any insurance coverage of any kind or type to secure any performance or address any liabilities or risks that may arise in relation to the Project.
- C. No Waiver of Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the City, or the Funding Recipient, their officials, officers, employees, contractors, or agents, or any other person acting on behalf of a Party and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

- D. Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this section shall not authorize assignment.
- E. No Third-Party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third-party, including any agent, sub-consultant or sub-contractor of a Party. Absolutely no third-party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.
- F. Article X, Section 20/TABOR. The Parties understand and acknowledge that the City is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The City represents to Funding Recipient that it has budgeted and appropriated sufficient funding to meet its obligations provided in this Agreement and, without limitation, the City has appropriated and reserved the Funding Amount from its Open Space Fund to pay its obligation under this Agreement. If the Funding Recipient is a governmental entity subject to TABOR and has any funding obligations under this Agreement, the Funding Recipient represents to the City that it has budgeted and appropriated sufficient funding to meet its obligations provided in this Agreement, if any. Therefore, the Parties acknowledge that the provisions of Article X, Section 20 of the Colorado Constitution are met. For any amounts not fully appropriated, the Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, all payment obligations of the Parties, if any, which are subject to TABOR, are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the Party's current fiscal period.
- G. Governing Law, Venue, and Enforcement. This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Arapahoe County, Colorado.
- H. Survival of Terms and Conditions. Without limitation by the provisions set forth in Section 3(C), the Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply. Without limiting the foregoing, the Parties specifically agree that Section 1(G) of this Agreement related to the Funding Recipient's obligation to credit the Funding Amount to the City in specific circumstances and the manner of effecting such credit(s) shall survive the termination date of this Agreement.
- I. Assignment and Release. All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by a

Party without the express written consent of the other Party, which consent may be withheld for any or no reason.

- J. Paragraph Captions. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.
- K. Integration and Amendment. This Agreement represents the entire and integrated agreement between the City and the Funding Recipient and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this must be in writing and be signed by both the City and the Funding Recipient. The City Manager is authorized to approve any amendment of this Agreement on behalf of the City that does not amend the funding obligations of the City hereunder, such as an extension of the term.
- L. Severability. Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.
- M. Notices. Unless otherwise specifically required by this Agreement, any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States Mail properly addressed to the intended recipient.

If to the City:

If to the Funding Recipient:

City Manager City of Centennial City of Centennial Civic Center 13133 E. Arapahoe Road Centennial, Colorado 80112	
With Copy to: City Attorney City of Centennial City of Centennial Civic Center 13133 E. Arapahoe Road Centennial, Colorado 80112	

- N. Authority. The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of City of Centennial

and the Funding Recipient and to bind their respective entities.

O. Special Provisions.

None.

SIGNATURE PAGE FOLLOWS

SAMPLE

IN WITNESS WHEREOF, the parties to the Agreement have set their hands and seals the day and year first written above.

CITY OF CENTENNIAL, COLORADO

Date: _____ By: _____
Matt Sturgeon, City Manager

ATTEST: Approved as to Form:

City Clerk or Deputy City Clerk By: City Attorney's Office

DEPARTMENT OF ORIGINATION: Community Development

DEPARTMENT/POSITION RESPONSIBLE FOR ADMINISTRATION OF CONTRACT:
Community Development

FUNDING RECIPIENT:

Date: _____ By: _____
Name: _____
Its: _____

ATTEST:

Secretary

EXHIBIT A
DETAILED DESCRIPTION OF PROJECT AND ASSOCIATED FUNDING

SAMPLE

EXHIBIT B

PHASING OF FUNDING

Funding Amount will be paid to Funding Recipient in a single installment upon the completion of all components of the Project and submittal of final invoicing from the contractor(s) performing the work to the Funding Recipient and subsequent submittal of final invoicing from the Funding Recipient to the City in a form acceptable to the City (Exhibit C). The City reserves the right to issue the total Funding Amount in a check made payable to either the Funding Recipient or the contractor(s) completing the Project.

SAMPLE

EXHIBIT C

FORM OF INVOICE

(Please provide on Funding Recipient Letterhead)

Sample Invoice

To: City of Centennial
Attention: Alex Grimsman
13133 E. Arapahoe Road
Centennial, CO 80112

Invoice Date:
Invoice Number:
Period of Work Performed:
Prepared By:

Open Space Project(s) or Project Component Name:

Invoiced Amount

(Provide Line Item by Expense and attach expenditure documentation. If requesting advance payment, provide documentation such as contract bid award, invoice, or estimate from third party)

[EXAMPLE
Concrete installation (Date of contractor invoice) \$ 1,500.00
Playground Equipment (Date of contractor invoice) \$15,000.00

Total Expenses Incurred \$16,500.00

Amount Due: \$16,550.00]

Please Remit Payment To:

EXHIBIT D

CITY NAMING RIGHTS AND RECOGNITION

A. Naming Rights

The City shall not have any naming rights in the Project except that the City logo will be included on signs approved by the City, and informational signs will include descriptions of the City's contributions to the Project and note City boundaries.

B. Other Recognition

N/A

SAMPLE